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Supreme Court of the United States

OCTOBER TERM 1944

No. 361

In the Matter of the Application of the

UNITED STATES OF AMERICA,

Respondent,

for a Writ of Prohibition and/or Mandamus

against

The Honorable FRANCIS G. CAFFEY, Judge of the District Court of the United States for the Southern District of New York, et al.,

Petitioners.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF

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PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioners, the Honorable Francis G. Caffey, Judge of the District Court of the United States for Southern New York, *et al.*, pray that a writ of certiorari issue to review the order (R. 53) of the United States Circuit Court of Appeals for the Second Circuit filed May 2, 1944, grant-

ing a writ prohibiting the petitioners from the further exercise of jurisdiction in an admiralty suit pending in the District Court for Southern New York wherein Agwilines Inc., as owner of steamship BRAZOS, and Olivarria & Company *et al.*, as owners of cargo in the BRAZOS, are libellants, and the United States is respondent.

Jurisdiction

Jurisdiction is based on Section 240(a) of the Judicial Code as amended, 28 U. S. Code 347.

The order of the Circuit Court of Appeals was filed May 2, 1944 (R. 53). By an order signed June 19, 1944 Mr. Justice Jackson extended the time of petitioners for the filing of this petition through August 22, 1944.

Opinions Below

The opinion of the District Court sustaining its jurisdiction is not reported except at 1943 A. M. C. 715. It is printed at pages 17-29 of the record.

The opinion of the Circuit Court of Appeals is reported, *United States* v. *Caffey*, 141 F. (2d) 69, C. C. A. 2, and is printed at pages 37-43 of the record.

Summary Statement

On January 13, 1942 steamship BRAZOS, owned by Agwilines Inc. and carrying cargo owned by Olivarria & Company *et al.*, was sunk in collision with steamship ARCHER, formerly called MORMACLAND, owned by the United States. On April 15, 1942 Agwilines Inc. filed its libel

(R. 8-10) against the United States alleging that the ARCHER, or MORMACLAND, was owned by the United States; that prior to the collision the custody of the vessel had been transferred to the United States Navy, whereupon she became a public vessel of the United States, and that at the time of the collision she was a public vessel of the United States. Libellant elected to have the suit proceed in accordance with the principles of libels both *in personam* and *in rem* (R. 10). Jurisdiction was predicated on the Public Vessels Act, March 3, 1925, Title 46 U. S. Code, §781, which authorizes suit against the United States for damages "caused by a public vessel of the United States".

The allegations of the intervening petition of Olivarria & Company *et al.* are substantially identical with those of the libel (R. 13-17).

The United States appeared specially and filed exceptive allegations asserting that in May, 1941 the United States Maritime Commission purchased the ARCHER; that the United States thereupon became the owner thereof; that she was converted for use as a war vessel; that on November 17, 1941 she was physically delivered to the British Admiralty and thereafter, with the consent of the United States, was continuously in the possession and under the exclusive command and control of the British Government, commanded, officered, manned and operated by the British Government as a war vessel (R. 11-13).

The exceptive allegations erroneously asserted that prior to the delivery of the vessel to the British Government her American documentation had been cancelled. However, respondent conceded below that the American documentation of the ARCHER was never cancelled.

The libellants moved to strike out the exceptive allegations. The motion was granted and the Court required the United States to answer on the merits, holding that the ARCHER was a "public vessel of the United States" inasmuch as she was owned by the United States and employed for a public purpose (Opinion, R. 17-29).

Thereafter respondent filed in the Circuit Court of Appeals a motion for leave to file a petition for a writ of prohibition or mandamus. The Circuit Court of Appeals denied the motion for want of jurisdiction (R. 30).

Respondent then filed in this Court a petition for a writ of prohibition or mandamus together with a prayer for a writ of certiorari, No. 15 Original, October Term, 1942. This Court granted the petition for certiorari and at the same time, June 7, 1943, in a *per curiam* opinion, reversed the decision of the Circuit Court of Appeals denying the petition for want of jurisdiction and remanded the cause to the Circuit Court of Appeals for further proceedings. *Ex Parte United States,* 319 U. S. 730 (R. 31-32).

Thereafter respondent filed in the Circuit Court of Appeals its petition for a writ of prohibition and/or mandamus and, after argument, the Court granted respondent's petition in an opinion filed March 3, 1944. Although conceding that the ARCHER was owned by the United States and employed for a public use the Circuit Court of Appeals held that she was not a "public vessel of the United States" because she was not controlled by any department or independent establishment of the United States at the time of the collision (Opinion, R. 37-43). *United States* v. *Caffey,* 141 F. (2d) 69, C. C. A. 2.

Petitioners' petition for rehearing was denied (R. 44-50).

Question Presented

Does the Public Vessels Act, Title 46 U. S. Code, §§ 781-790, authorize suit against the United States on principles of *in rem* liability to recover damages caused by a war vessel owned by, and documented as, a vessel of the United States but in the possession of the British Government and operated as a unit of its Navy pursuant to the provisions of the Lend-Lease Act in the interest of the national defense of the United States?

Statute Involved

Section 1 of the Public Vessels Act (March 3, 1925, c. 428, §1, 43 Stat. 1112; Title 46 U. S. Code §781) provides:

> "A libel in personam in admiralty may be brought against the United States, or a petition impleading the United States, for damages caused by a public vessel of the United States * * *."

Reasons for Granting the Writ

1. The ARCHER, government-owned, was one of a large number of government-owned vessels which have been delivered to foreign governments under the Lend-Lease Act but which continue to be owned by the United States. There are numerous cases of damage caused by these vessels and it is of the utmost importance to the steamship industry, as well as to the United States, to obtain a final and authoritative decision as early as possible on the question whether such vessels are "public vessels of the United

States", for the torts of which the United States is suable under the Public Vessels Act.

2. The decision below is erroneous, being based exclusively upon a procedural provision of the Act and ignoring

(a) the fact that the ARCHER was owned by, i.e. was a "vessel of", the United States employed in the "public" service, i.e. the defense of the United States;

(b) the plainly declared purpose of the Act as appears from its legislative history, and

(c) the liability of the United States on *in rem* principles, a liability plainly assumed by the terms of the Act.

WHEREFORE petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Circuit Court of Appeals for the Second Circuit, commanding that Court to certify and to send to this Court for its review and determination on a day certain to be named therein, a full and complete transcript of the record and of the proceedings in the case numbered and entitled on its dockets "No. 38, October Term, 1943, In the Matter of the Application of the United States of America, Petitioner, For a Writ of Prohibition and/or Mandamus, against The Honorable Francis G. Caffey, Judge of the District Court of the United States for the Southern District of New York, and the other Judges and Officers of said Court, Respondents", and that the decision of said Circuit Court of Appeals in said case be reversed, and the order for a writ of prohibition be

vacated, and that your petitioners have such other and further relief in the premises as may be just.

THE HONORABLE FRANCIS G. CAFFEY,
JUDGE OF THE DISTRICT COURT OF THE
UNITED STATES FOR THE SOUTHERN
DISTRICT OF NEW YORK ET AL.

By CHAUNCEY I. CLARK
Counsel

New York, N. Y.
August 16, 1944.